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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,743	01/22/2002	Robert E. Fischell	A1-01	8648

7590 12/01/2004

Robert E. Fischell  
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EXAMINER

GETZOW, SCOTT M

ART UNIT PAPER NUMBER

3762

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/051,743	Applicant(s) FISCHELL ET AL.	
	Examiner Scott M. Getzow	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-90 is/are pending in the application.  
     4a) Of the above claim(s) 87 and 88 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-86, 89 and 90 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-13,16,18-40,43-45,47,48,50-54,57,60-63,65,67-72,74-77,79,83,89,90 rejected under 35 U.S.C. 102(b) as being anticipated by Fischell et al (6112116).

Fischell is considered to encompass all of the structure of the above claims.

Column 1, line 35 teaches that the patient can self-inject. Column 1, line 59 teaches that an ischemic condition can be sensed, along with a deviated ST segment.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 17,64,73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al in view of Lebel et al (6577899).

To have various alarm patterns for the different sensed conditions would have been obvious in light of the teachings for such in Lebel, column 27, lines 37-51.

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5. Claims 78,82,84,85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al in view of Riff et al (2003/0139785).

Riff teaches the use of a database where patient records are stored, as well as the ability to communicate with a physician at an expert data center. To have such features would have been obvious to use with Fischell since such allows for more efficient care of the patient as well as the ability to have an expert diagnose the patient's condition as quickly as possible.

6. Claims 80,81,86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al in view of Mischynski et al (6656125).

The '125 patent teaches the use of GPS in locating a patient; see especially column 21, lines 34-45. It would have been obvious to use such with the device of Fischell since it would promote better patient care by being able to quickly identify the patient's location if the patient is unconscious.

7. Claims 41,42,46,49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al.

To modify the intensity of the alarm is considered to have been obvious since patients differ as to their ability to hear a sound or sense a vibration, and a certain amount of personalizing of the device is to be expected. Further, to use separate cases for the detection circuitry and the pacer/defibrillator circuitry

would have been obvious since it is well known that such separation would reduce electrical interference with the signals sensed from the patient.

8. Claims 14,15,58,59,66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al in view of McDonald (5009644).

McDonald teaches the ability to determine when a hypodermic needle is properly aligned with the septum of an implanted reservoir. It would have been obvious to use such with the device of Fischell since proper placement of the needle is important for the device to function correctly.

9. Claims 55,56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al in view of Grandia et al (5827204).

It is well known in the art that vibrations can break up blood clots, as taught in column 3, first paragraph of Grandia. It would have been obvious to use such a feature with the device of Fischell since such has been shown to be beneficial to the patient who is susceptible to blood clots.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ferek-Petric teaches detecting heart attack and ischemia.

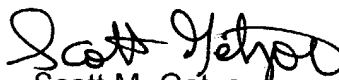
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SG Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (571) 272-4946 ~~(703) 308-~~

~~2997~~. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Scott M. Getzow  
Primary Examiner  
Art Unit 3762

smg